**S.B.Civil Writ Petition NO.479/2004**

**Ashok Mutha & Ors.**

**vs**

**Addl. District Judge & Ors.**

**DATE OF ORDER** : - 2.2.2005

**HON'BLE MR. PRAKASH TATIA,J.**

Mr. M.S.Singhvi, for the petitioner.
Mr.L.R.Upadhayay, Dy.GA, for the respondents.

**<><><>**

Heard learned counsel for the parties.

This writ petition is against the order of the appellate court dated 4th July, 2001 by which the learned Addl. District Judge, Abu Road put a condition upon the petitioners directing them to submit an undertaking that in case the road is converted into National Highway by the Central Government and the budget is allotted for construction of the road then the petitioners shall remove the structure, which will be falling within the 75' from the center of the road and further, the petitioner will not claim any compensation either from the State Government or from the Union of India for removal of construction.

According to learned counsel for the petitioner, it is clear from the impugned order itself that neither the road has been declared as National Highway nor there is any provision for construction of the road as budget has not been sanctioned by the Central Government. It is also submitted that the land has already been converted for commercial purposes by order of the Land Conversion Officer dated 12th Oct., 2001, but following the decision of the Civil Court, the Land Conversion Officer also incorporated the condition no.7 in the land conversion order dated 12th Oct., 2001 and provided in the order that the petitioners shall submit an undertaking that in case the way is converted in the National Highway then the petitioners shall remove the structure. According to learned counsel for the petitioners, though the condition has been incorporated in the conversion order dated 12th Oct., 2001 in the case of the petitioners, but in other cases for the land conversion on the same road in the same building line, the Land Conversion Officer passed the conversion order on 18.2.2003 wherein he put a condition that only upto 50' from the center of the road shall be not available for the construction. According to learned counsel for the petitioners, the petitioners are the owner of the property and obtained the valid order of conversion of land and, therefore, have right to enjoy the property. In case any authority intend to acquire the property then the property can be acquired in accordance with law. Only putting a condition so as to deprive the construction on the property cannot be just and proper,

that too, only on mere anticipation that in future the land running near to the petitioners' property will be converted into National Highway and the budget will be sanctioned some time later on.

In view of the facts mentioned above, it is clear that the land was duly converted by the competent authority and that conversion is not in dispute. The restriction imposed in the conversion order is because of the order passed by the appellate court while deciding the petitioners' application arising in the proceedings for grant of temporary injunction. From the order of the civil court dated 4th July, 2001 itself it is clear that neither the land has been declared as National Highway nor there was any provision for construction of the road as National Highway. Therefore, the condition restricting the petitioners from constructing within 75' from the center of the road appears to be absolutely illegal and perverse. Assuming for the sake of argument that there cannot be a construction with 75' from the center of the National Highway then admittedly, the way which is passing near to petitioners' land is not National Highway. The restriction, which has been imposed about the land near National Highway cannot be imposed on the land which is not on the National Highway.

In view of the above, the writ petition deserves to be allowed, hence allowed. The condition imposed by the court by order dated 14th

July, 2001 restricting the petitioners either from raising construction or in case petitioners raise the construction, they shall remove the construction and shall not claim compensation from State Government or Union of India and further giving undertaking are set aside and the restriction imposed in the conversion order only because of the order of the civil court dated 4th July, 2001 shall have no effect. However, it is made clear that petitioners shall not raise any construction in violation of the permission, which has been granted to the petitioners by the Gram Panchayat for raising construction.

**(Prakash Tatia), J.**

c.p.goyal/-